

Office of the State Public Defender

BIENNIAL ADMINISTRATIVE RULE REVIEW

October 18, 2013

BACKGROUND

The [Montana Administrative Procedure Act](#) (MAPA) (in [2-4-314](#), MCA) requires each state agency to review its administrative rules at least biennially to determine whether any new rules should be adopted or any existing rules should be modified or repealed. As an agency attached to the Department of Administration (DOA), the Office of the State Public Defender (OPD) follows the DOA review schedule, conducted in the year following legislative sessions. This ensures that new legislation is considered during the rule review. In addition, the DOA Director has signing authority for OPD rules.

WHAT IS AN ADMINISTRATIVE RULE?

MAPA defines a rule as "each agency regulation, standard, or statement of general applicability that implements, interprets, or prescribes law or policy or describes the organization, procedures, or practice requirements of an agency." A rule does not include a statement "concerning only the internal management of an agency or state government and not affecting private rights or procedures available to the public." Any such administrative rules should be repealed.

REVIEW PROCEDURE

MAPA requires that rules not unduly repeat statutory language and that rule language be limited to that which is reasonably necessary. New rules must meet these tests initially and rule review must ensure that later statutory language has not created a need to change the rule or eliminate it altogether.

Each rule must state the statutes it implements and the statutes that give the agency rulemaking authority. Citations for each rule must be checked to make sure they are still correct. This is particularly important for rules that were adopted some time ago.

Some rules adopt other material by reference. The referenced materials for any such rules must be checked to ensure that it is still pertinent. The requirements of [2-4-307](#), MCA, to provide notice in the Montana Administrative Register of later amendments to the referenced material must be followed.

OPD's ADMINISTRATIVE RULES

The agency first adopted six administrative rules in 2007 and they are:

1. Organization of the statewide public defender system: Rule 2.69.101
2. Procedures for adopting, amending and repealing agency rules: Rule 2.69.201
3. Procedures for the issuance of declaratory rulings: Rule 2.69.202

4. Definitions: Rule 2.69.203
5. Determination of indigency: Rule 2.69.301
6. Reasonable compensation: Rule 2.69.601

PROCESS FOR ADDING, MODIFYING, OR REPEALING RULES

The Commission is responsible for administrative rules per 47-1-105 (8) and must approve any rule changes. They may choose to appoint a committee of Commission members to review the rules and offer recommendations, or they can direct agency staff to undertake this process and report to the Commission.

If the Commission wishes to add, modify or repeal rules, the Secretary of State has a specific timetable that must be followed including publishing the proposal, notification to the primary bill sponsor, allowing for public comment through a public hearing and/or by mail, considering and responding to the public comment, making changes to the proposal, and final publication. An Administrative Rules Hearings Officer appointed by the Commission in conjunction with agency staff will direct the process, ensuring Commission review and approval at each step, as well as review and approval by DOA rule reviewers and the DOA agency director as appropriate.